Supreme Court, U.S.
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No. 96-237

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

DAVID LOCKMILLER,

Petitioner,

v.

SUPERIOR COURT, SANTA CLARA COUNTY,

Respondent.

Petition for Writ of Certiorari
to the California Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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To the Honorable Chief Justice and the Associate Justices of the United States Supreme Court:

Real Parties In Interest Dennis Del Ponte and the Law Offices of Zingheim, Vernon & Del Ponte respectfully request that this Court deny Petitioner's petition for writ of certiorari following the decision of the California Court of Appeal, Sixth Appellate District filed on January 16, 1996 and the decision of the California Supreme Court, filed on March 20, 1996.

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On February 3, 1988, Petitioner filed his original complaint, in propria persona, alleging legal malpractice against Real Parties In Interest Dennis Del Ponte and the Law Office of Zingheim, Vernon & Del Ponte. The complaint pertained to incidents dating back to November 1983. Real Parties In Interest answered the complaint on March 2, 1988. Although Petitioner claims to have had two conversations with an unidentified insurance representative regarding settlement in March 1988, and although Petitioner claims to have retained an expert at that time, Petitioner took no further steps to prosecute his legal malpractice action for more than three years and it appeared that Petitioner had abandoned this case. Thereafter, Real Parties In Interest brought a motion to dismiss under California Code of Civil Procedure §§ 583.410 and 583.420 for Petitioner's failure to prosecute and for Petitioner's failure to bring the case to trial within three years. Petitioner did not contest or otherwise respond to the motion. On June 20, 1991, nearly three and one-half years after Petitioner commenced this

lawsuit, the California Superior Court heard and granted the motion to dismiss.

In December 1995, over four and one-half years after the case had been dismissed, and long after the time for bringing an appeal had elapsed, Petitioner filed a petition for writ of error coram vobis in the California Court of Appeal, Sixth Appellate District. Notwithstanding the basis for the Superior Court's dismissal, i.e., Petitioner's inexcusable dilatory conduct, the petition to the Court of Appeal pertained primarily to the supposed merits of Petitioner's lawsuit and Petitioner's inability to locate an attorney to represent him. In addition, the petition contained numerous conclusionary, inflammatory, and unsupported allegations to the effect that the Real Parties In Interest had committed extrinsic fraud on the Superior Court. The petition did not pose any federal issues. On January 16, 1996, the Court of Appeal issued the following decision: "The petition for writ of mandate is denied." At no time did the Court of Appeal suggest that any federal question formed the basis for its denial of the petition. Moreover, at no time did the Court of Appeal provide any further explanation for its ruling.

Thereafter, Petitioner filed a petition for review by the California Supreme Court, arguing for the first time that his rights as set forth in the Constitution of the State of California were violated because he assumed that the Court of Appeal was holding his brief to the same "technical rules" as those applicable to briefs filed by licensed attorneys specializing in appellate practice. Notwithstanding Petitioner's speculation as to the basis for

the writ denial, the record is devoid of any evidence suggesting that the Court of Appeal denied Petitioner's petition on the basis of its nonconformity with any "technical rules." More importantly, Petitioner's petition for review failed to present any issue appropriate for review by the California Supreme Court in that the petition did not address any unsettled important questions of law within the meaning of California Rules of Court 29(a). On March 20, 1996, the California Supreme Court issued the following decision: "Petition for review DENIED." Like the Court of Appeal, the California Supreme Court did not provide any further explanation or insight as to the basis for its decision.

II. PETITIONER'S PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

Review by this Court is neither necessary nor appropriate. Notwithstanding Petitioner's arguments, the issues posed by this action do not satisfy this Court's jurisdictional requirements. Moreover, the petition fails to present any compelling reasons sufficient to justify consideration by this Court. Furthermore, the decisions from which Petitioner seeks relief should not be set aside.

Petitioner fails to identify any statutory provision conferring jurisdiction on this Court to review the decisions filed earlier this year by the California Court of Appeal, Sixth Appellate District and the California Supreme Court. However, assuming that Petitioner intended to seek jurisdiction under 28 U.S.C. § 1257, Petitioner's petition should be denied. Simply stated, this action does not meet

the jurisdictional requirements because it does not raise any issue as to the validity of any federal or state statute. Likewise, this action does not present a Constitutional or other claim of title, right, privilege, or immunity within the meaning of 28 U.S.C. § 1257. In this regard, the Constitutional questions identified by Petitioner have no connection to the facts or procedural history of this action and have never formed the basis for any decision by any Court during the course of this litigation.

Furthermore, Petitioner's arguments are without merit because they are based upon wholly inaccurate assumptions as to the rationale for the decisions rendered by the California Court of Appeal and by the California Supreme Court in this action. Contrary to what Petitioner would have this Court believe, there is no evidence that either the California Court of Appeal or the California Supreme Court denied Petitioner's petitions because Petitioner was not represented by legal counsel. There is also no evidence that either the California Court of Appeal or the California Supreme Court refused to apply binding authority when considering Petitioner's briefs. In fact, because Petitioner cannot make an affirmative showing to the effect that he had good cause for his delay in prosecuting his action, there is no authority that would mandate review or reversal of the California Superior Court's judgment of dismissal for Petitioner's failure to prosecute -- regardless of whether the appellate decisions were premised upon Petitioner's failure to comply with the rules of appellate practice.

Petitioner's failure to present with accuracy, brevity,

and clearness the facts essential to a ready and adequate understanding of the points requiring consideration in this action provides yet additional justification for this Court to deny the petition for writ of certiorari. Consequently, and for all of the reasons set forth above, Real Parties In Interest respectfully request that this Court deny Petitioner's petition for writ of certiorari.

Respectfully submitted,

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